



RESPONSE TO REQUEST FOR INFORMATION REGARDING THE BUREAU'S CONSUMER COMPLAINT AND CONSUMER INQUIRY HANDLING PROCESS

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Agency: Bureau of Consumer Financial Protection
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We appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's (Bureau) request for information on its consumer complaint and consumer inquiry handling process.¹ The Mercatus Center at George Mason University is dedicated to bridging the gap between academic ideas and real-world problems and to advancing knowledge about the effects of regulation on society. This comment, therefore, does not represent the views of any particular affected party or special interest group but is designed to assist the Bureau as it considers whether it should modify its consumer complaint and inquiry handling processes.

On July 23, 2014, the Bureau published to the *Federal Register* a notice of proposed policy statement with request for public comment proposing to expand the disclosure of information to the Consumer Complaint Database to include "unstructured consumer complaint narrative data."² The Mercatus Center at George Mason University submitted a comment in response to that notice.³ The suggestions made in that comment are still relevant and could help the Bureau as it assesses the handling of consumer complaints. For this reason we are resubmitting the previous letter. The previous letter is attached and is summarized below.

¹ Request for Information Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes, 83 Fed. Reg. 16839 (April 17, 2018).

² Disclosure of Consumer Complaint Narrative Data, Notice of Proposed Policy Statement with Request for Public Comment, 79 Fed. Reg. 42765 (July 23, 2014).

³ Hester Peirce and Vera Soliman, "Disclosure of Consumer Complaint Narrative Data" (Public Interest Comment, Mercatus Center at George Mason University, September 10, 2014).

THE CONSUMER COMPLAINT DATABASE IS A SOLUTION IN SEARCH OF A PROBLEM

The Bureau has not identified the market failure that the Consumer Complaint Database is intended to address, and many private businesses already offer consumers avenues to provide—and offer the public access to view—both positive and negative feedback on a wide variety of products and services.

THE COSTS OUTWEIGH THE BENEFITS

Direct costs to the Bureau include the following:

- Expending resources to verify an existing relationship between the complainant and the financial institution.
- Expending resources to scrub comments and company responses of personally identifiable information in order to guard against the potential harm associated with reidentification of consumers.
- Responding to financial institutions about misleading or inaccurate complaints submitted by consumers.
- Publishing unverified consumer narratives, which exposes the Bureau to litigation risk and associated expense.
- Rising costs, which are likely if the Bureau screens out baseless comments and if consumers look to the Bureau to intervene in the complaints they might otherwise make directly to the company at issue.

Indirect costs to the Bureau include the following:

- Endangering its reputation as a data-driven agency if the Bureau writes rules or brings enforcement actions based on the unverified, redacted complaints in the database that contains only negative anecdotes, which are unlikely to provide an accurate and representative reflection of a wider issue that would justify a rule or enforcement action.
- Undermining its ability to carry out its mission effectively—to ensure fairness, transparency, and competitiveness.

The potential for harms to financial institutions include the following:

- Reputational harm is a serious cost, especially to small financial institutions.
- Anonymized complaints—which lack context—and the short time allowed for institutions to respond to complainants make it difficult to submit a meaningful and appropriate response.
- Pressure to address every complaint regardless of merit takes resources away from addressing complaints that have merit.

THE BUREAU LACKS STATUTORY AUTHORITY TO COLLECT AND PUBLISH CONSUMER NARRATIVES

While the Bureau does have the authority to collect complaints from consumers,⁴ to share related data with other state and federal agencies,⁵ and to report to Congress about the complaints it receives,⁶ the statute does not provide the Bureau with the authority to collect consumer narratives and to share consumer complaints with the public.

THE CONSUMER COMPLAINT DATABASE AS CURRENTLY ESTABLISHED IS INCONSISTENT WITH THE OFFICE OF MANAGEMENT AND BUDGET'S OPEN GOVERNMENT DIRECTIVE⁷

- Unverified consumer narratives fail to meet information quality standards (including objectivity, utility, and integrity) set forth in the Office of Management and Budget's (OMB) Open Government Directive.
- The principles of open government described in the directive (transparency, participation, and collaboration) are intended to open the operations of government to public view, not the interactions between individuals and private companies.
- The data collection programs of other government agencies under the OMB directive, cited by the Bureau, do not collect consumer narratives.

OTHER GOVERNMENT DATABASES CITED BY THE BUREAU ARE NOT COMPARABLE

- Consumer complaints collected by the Federal Trade Commission and the Consumer Product Safety Commission, cited by the Bureau, differ considerably from the Bureau's Consumer Complaint Database.
 - The Federal Trade Commission releases consumer complaints it receives in response to Freedom of Information Act requests,⁸ not on a publicly accessible government website.
 - The Consumer Product Safety Commission's consumer complaint database was established in response to a statutory mandate,⁹ which includes procedural safeguards on database quality.¹⁰

CONCLUSION

Consideration of the handling of consumer complaints announced in the Bureau's request for information presents the agency with an opportunity to reassess the Consumer Complaint Database more thoroughly. The handling of consumer complaints requires the Bureau to consider the nature and impact of the information submitted to it and published by it (that is, unverified,

⁴ 12 U.S.C. § 5493(b)(3)(A).

⁵ 12 U.S.C. § 5493(b)(3)(D).

⁶ 12 U.S.C. § 5493(b)(3)(C).

⁷ Peter Orszag, Director, Office of Management and Budget, *Open Government Directive*, December 8, 2009, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf.

⁸ Federal Trade Commission, "Frequently Asked Questions," accessed June 27, 2018, <https://www.ftc.gov/about-ftc/foia/frequently-asked-questions-faq#request>.

⁹ Consumer Product Safety Improvement Act, Pub. L. 110-314, 122 Stat. 3048 (2008).

¹⁰ 15 U.S.C. § 2055a(c)(2); 15 U.S.C. § 2055a(b)(5); 15 U.S.C. § 2055a(c)(4).

anecdotal, exclusively negative feedback). For these reasons, the concerns raised in our comment submitted in response to the notice of proposed policy statement issued by the Bureau in 2014 remain relevant today.

ATTACHMENT

“Disclosure of Consumer Complaint Narrative Data” (Public Interest Comment)



Disclosure of Consumer Complaint Narrative Data

Bureau of Consumer Financial Protection

Comment period closes September 22, 2014

Submitted September 10, 2014

Attention: Ms. Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection

HESTER PEIRCE

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Dear Ms. Jackson,

We appreciate the opportunity to comment on the proposed policy statement regarding the Disclosure of Consumer Complaint Narrative Data issued by the Bureau of Consumer Financial Protection (the Bureau).¹ The Mercatus Center at George Mason University is dedicated to bridging the gap between academic ideas and real-world problems and advancing knowledge about the effects of regulation on society. This comment does not represent the views of any particular affected party or special interest group but is designed to assist the Bureau as it considers expanding the consumer complaint database to include consumer narratives.

INTRODUCTION

In its current consumer complaint program, the Bureau invites consumers who “have an issue with a financial product or service” to make complaints.² The Bureau forwards these complaints to the relevant companies and solicits a response. Mortgages, auto loans, student loans, bank accounts, virtual currencies, and credit cards are among the products and services about which people can submit complaints. The Bureau publishes the complaints in a publicly accessible consumer complaint database. Other than verifying that the customer has a relationship with the company that is the subject of the complaint, the Bureau makes no attempt to assess the veracity of the

1. Disclosure of Consumer Complaint Narrative Data, Notice of Proposed Policy Statement with Request for Public Comment. 79 Fed. Reg. 42765 (July 23, 2014) [hereinafter Proposed Policy Statement].

2. Bureau of Consumer Financial Protection, “Submit a Complaint,” accessed September 5, 2014, <http://www.consumerfinance.gov/complaint>.

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facts, let alone whether the financial institution named in the complaint has violated a law. As the Bureau explains,

We don't verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company. Complaints are listed here after the company responds or after they have had the complaint for 15 calendar days, whichever comes first.³

The database currently includes basic information about the complaint and its resolution. The Bureau proposes to expand the existing database to include unverified consumer narratives and company responses. The Bureau will scrub complaints and responses of information that could identify the consumer.

This public interest comment suggests that there is not a market failure that would justify the public database. The comment identifies the costs to the consumers whom the database will mislead; the financial service providers whose reputations the database will tarnish; and the Bureau, which will have to incur great expense to prevent the database from undermining its mission of protecting consumers. The comment also raises concerns about the lack of statutory authority to expand the database and its incompatibility with open government directives.

THE EXPANDED DATABASE IS A SOLUTION IN SEARCH OF A PROBLEM

The Bureau has not identified a problem that requires a regulatory solution. The Bureau contends that, absent publication of complaint narratives, it cannot meet the needs of consumers “who may choose to file a complaint only if they will have the opportunity to share their story and other consumers who may overcome their reticence to submit a complaint by reading the experiences of others.”⁴ There may be a powerful consumer demand for sharing bad experiences, but a private complaint database provider can more effectively satisfy that demand. Such databases already exist for many products and services.

Services like Yelp and Amazon.com collect and publish feedback on numerous consumer products and services. These companies, mindful of their own commercial interests, foster the provision of helpful and accurate content. Unlike the Bureau's website, these companies include both positive and negative comments. As a result, these sites contain more balanced and complete information for consumers than a government website designed solely to collect complaints. In addition, both companies have developed systems to empower readers to assess reviews for accuracy and usefulness.

Yelp's reviews of local businesses “are written by people using Yelp to share their everyday local business experiences, giving voice to consumers and bringing ‘word of mouth’ online.”⁵ Yelp “analyze[s] and screen[s] all of [its] reviews” with its “recommendation software [that] looks at a wide range of data associated with each review and reviewer in order to determine the review's relevance and reliability.”⁶ For example, the software is designed to not recommend to readers reviews that are “posted by a less established user” or appear to be “an unhelpful rant or rave.”⁷ Only recommended reviews affect a firm's rating, and reviews that are not recommended are displayed separately from recommended reviews.⁸ Recommended reviews are default ordered according to “recency, user voting, and other review quality factors,” but users also can tailor the ordering.⁹ Yelp reserves the right to remove reviews that violate the site's “Content Guidelines,”¹⁰ which instruct users to ensure—among other things—that their reviews are “unbi-

3. Bureau of Consumer Financial Protection, “Consumer Complaint Database,” accessed September 5, 2014, <http://www.consumerfinance.gov/complaintdatabase>.

4. *Ibid.*

5. Yelp, *Annual Report on Form 10-K for Fiscal Year Ended December 31, 2013* (March 3, 2013), 1.

6. *Ibid.*, 6.

7. Yelp, “Support Center: Why Would a Review Not Be Recommended?,” accessed September 5, 2014, http://www.yelp-support.com/article/Why-would-a-review-not-be-recommended?l=en_US.

8. *Ibid.*

9. “How Is the Order of Reviews Determined?,” Yelp Support Center,” Yelp, accessed September 5, 2014, http://www.yelp-support.com/article/How-is-the-order-of-reviews-determined?l=en_US.

10. “Terms of Service,” Yelp, accessed September 5, 2014, <http://www.yelp.com/static?p=tos>.

ased and objective,” “relevant,” and “factually correct.”¹¹ Yelp users can rate reviews as “Useful, Funny, or Cool.”¹² Yelp publicly designates as “elite” reviewers that it identifies as having “well-written reviews, high quality tips, a detailed personal profile, an active voting and complimenting record, and a history of playing well with others.”¹³

Amazon.com, which sells a wide range of consumer goods directly and from third-party sellers, allows registered customers to rate and review products and sellers. These reviews are available to other users, who can sort product search results in order of best product ratings.¹⁴ The company is testing a feature that allows customers to rate particular product attributes.¹⁵ Amazon.com also recently began routing questions from customers about particular products to other customers who have already purchased the product.¹⁶ Amazon.com does not post reviews that do not meet review guidelines¹⁷ and reserves the right to remove any content that it determines to be “harmful to our systems, network, reputation, or goodwill, to other Amazon.com customers, or to any third party.”¹⁸ Amazon.com encourages reviewers to provide “helpful, high-quality reviews” by ranking reviewers and recognizing top reviewers.¹⁹ A reviewer’s rankings are based on assessments by other customers about the usefulness of that reviewer’s contributions.²⁰

Yelp and Amazon.com are just two examples of privately operated databases that collect and publish consumer opinions. The existence of these and many other similar private websites suggests that there is no need for the government to run its own complaint publication website. Private comment databases have a commercial incentive to develop ways to signal the relative trustworthiness of reviewers, to encourage accurate reviews, and to ensure that the mix of reviews is representative of consumers’ actual experiences. The Bureau does not propose to take comparable steps to ensure the quality of its database and would likely be reluctant to do so for fear of appearing to take the concerns of some consumers more seriously than others. Private aggregators of commentary on products and services are thus better able to collect and publicize consumer feedback. Relying on the private markets to fill this need also ensures that consumers will not be misled into believing that the government has investigated and verified the complaints.

THE COSTS OF THE PROPOSED DATABASE EXPANSION OUTWEIGH THE BENEFITS

The public consumer complaint database is not only unnecessary, but costly. Expanding the database to include customer narratives only adds to the expense. Consumers, providers of financial products and services, and the Bureau will incur costs if the database is expanded as proposed.

The Proposed Expansion Aggravates the Database’s Harm to Consumers

In its current form, the database presents a skewed picture for consumers. Consumers see all complaints, regardless of their veracity, merit, or legal significance. Adding narrative information—which will likely

11. “Content Guidelines,” Yelp, accessed September 5, 2014, <http://www.yelp.com/guidelines>.

12. “How Do I Vote a Review as Useful, Funny, or Cool?,” Yelp, accessed September 5, 2014, http://www.yelp.com/faq#how_to_get_ufc.

13. “What is Yelp’s Elite Squad?,” Yelp, accessed September 5, 2014, http://www.yelp-support.com/article/What-is-Yelps-Elite-Squad?!=en_US.

14. “Customer Reviews,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/gp/help/customer/display.html/?nodeId=12177361>.

15. “About Customer Ratings,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/gp/help/customer/display.html?nodeId=200791020>.

16. Amazon.com, *Annual Report on Form 10-K for Fiscal Year Ended December 31, 2013* (Jan. 30, 2014), 5-6.

17. “Submit a Review,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/gp/help/customer/display.html?nodeId=201145120>.

18. “Help & Customer Service: Profile and Community Guidelines,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/gp/help/customer/display.html?nodeId=14279631>.

19. “Amazon’s Top Customer Reviewers,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/review/top-reviewers>.

20. “Help: How ranking works,” Amazon.com, accessed September 5, 2014, <http://www.amazon.com/gp/customer-reviews/guidelines/top-reviewers.html>. For each review, customers are afforded the opportunity to answer the following question: “Was this review helpful to you?”

be more interesting to read than the basic information in the current database—would make it even more likely that consumers will look at and rely on the database in making decisions. By publishing a database of unverified, redacted (to remove personally identifiable information) consumer complaints, the Bureau would entice consumers to rely on incomplete and potentially inaccurate information—exactly the type of practice the Bureau seeks to stop financial firms from engaging in.

Devoid of context, every complaint will carry equal weight, regardless of the facts and circumstances and the complainant’s motivation. Because of their location in a government database, the complaints will carry an air of official gravity. The page on which the complaints are displayed does not display a disclaimer that they are not verified.²¹ Consumers may find it difficult to distinguish valid complaints from expressions of temporary frustration, unwarranted grievances, anger over being denied credit, or intentional efforts to cause reputational damage to a financial services provider. There is no way to discern whether a complaint involves a violation of federal law. The database will not contain metrics to allow customers to compare the number of complaints to the size of the institution and its activities in a particular market, so database users will be able to draw few useful inferences.²²

The Bureau acknowledges the possibility that “a complainant’s misunderstanding or misrecollection of what happened” could result in the publication of “factually incorrect information.”²³ It contends, however, that “the marketplace of ideas” ultimately will bring the truth to light.²⁴ Given that the database collects only complaints, it is an intentionally one-sided marketplace. Even for companies with many satisfied customers, positive comments will not be included in the database to offset negative comments. Consumers, relying on the database as a relevant input in their financial decision-making, will not get an accurate picture.

The Expanded Database Will Harm Financial Institutions

Financial institutions, unable to effectively counteract or provide context for complaints, could suffer severe reputational harm. The database may be most damaging to small financial institutions for which a single baseless complaint would likely constitute a larger percentage of the total mix of available information. Although the Bureau is not a safety and soundness regulator, it ought nevertheless to be mindful of the possibility that the database—by publishing inaccurate or inadequately contextualized information—could have a substantially harmful effect on the safety and soundness of a financial institution.

In an effort to offset potential factual inaccuracies, the Bureau proposes to publish company responses along with consumer narratives.²⁵ While allowing companies to respond is preferable to not allowing them to do so, companies face substantial obstacles to providing a meaningful and appropriate response. First, companies are required to respond within a short timeframe—the Bureau generally posts complaints within fifteen days of the day they are forwarded to the company. This gives the company little time to assess the particular facts and circumstances presented by the customer, attempt to address the customer’s concerns, and craft a response for the database. Second, companies are directed not to include in their response any information that could identify the customer. If they improperly include such information, the Bureau will remove it. This means that

21. Bureau of Consumer Financial Protection, “Consumer Complaints,” accessed September 5, 2014, <https://data.consumerfinance.gov/dataset/Consumer-Complaints/x94z-ydhh>. While there is a disclaimer elsewhere on the Bureau’s website, it is difficult to find. Bureau of Consumer Financial Protection, “Consumer Complaint Database,” accessed August 28, 2014, <http://www.consumerfinance.gov/complaintdatabase/> (“We don’t verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company.”).

22. See *also* Letter from National Council of Higher Education Resources to Monica Jackson, Bureau of Consumer Financial Protection (August 11, 2014), 3 (suggesting that the Bureau “put into context the relationship between the number of complaints received by a particular company and the overall number of transactions that company completes in a given time period [monthly, quarterly, or annually]”).

23. Proposed Policy Statement, 42767.

24. Proposed Policy Statement, 42767.

25. Proposed Policy Statement, 42768.

some key details that would provide relevant context will be left out. Responses to complaints about financial products and services often turn on very specific details of a person's interactions with a financial institution. Leaving those specifics out renders the response unresponsive.

The public database will impose substantial costs on companies. Because of the public and permanent nature of the database and the inclusion of a field related to company responsiveness, companies are likely to feel compelled to resolve even meritless complaints.²⁶ Doing so will decrease the attention they can devote to customers whose complaints have merit. Complainants may end up with preferable treatment to people who deal directly with the company.

The Expanded Database Will Cause the Bureau to Incur Unnecessary Costs

Expanding the public consumer complaint database would be costly for the Bureau. First, the direct costs of maintaining a database and verifying the relationship between the complainant and the financial institution are substantial.²⁷ Second, as the Bureau notes, “the potential harm associated with the possible reidentification of actual consumers” is a “principal risk of publishing narratives.”²⁸ To adequately guard against this risk, the Bureau likely will have to expend considerable resources scrubbing complaints and company responses of personally identifiable information. Third, the Bureau is also likely to have to expend substantial resources responding to financial institutions about complaints they believe to be misleading. Publishing inaccurate information about financial institutions may expose the Bureau to litigation risk and associated expense. Fourth, if the Bureau were to screen out baseless complaints in order to make the database less misleading, the costs of running the database would be even higher. Fifth, the Bureau's costs are likely to rise as consumers look to the Bureau to intervene in complaints they would otherwise have addressed directly with the company at issue.

While the Bureau's direct costs from the expanded database would be high, so are the indirect costs—namely, the impairment of the Bureau's ability to carry out its mission effectively. The Bureau's mission is to implement and enforce financial laws for the purpose of “ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”²⁹ Publishing unverified complaints is detrimental to fairness, transparency, and competitiveness and is unseemly for a purportedly data-driven agency. Market fairness is undermined if consumers avoid products and services that would meet their needs in response to information they assume to be true because they find it in a government database. Publishing potentially inaccurate information impedes market transparency by adding potentially inaccurate complaint data to the mix of available information. A database filled with a mixture of meritorious and meritless complaints interferes with the competitive forces that should shape markets. The database may also scare consumers away from legitimate financial products and services by fostering unwarranted fears about financial institutions and the quality of their products and services.³⁰ The Bureau collects consumer complaints and analyzes them to look for patterns and assist consumers in resolving issues. In doing so, it presumably does some investigative legwork to put the complaint in context of the institution's broader consumer complaint record and the specific facts of the individual's experience. The Bureau would not be true to its own claim to be “data-driven” if it were to write a rule or bring

26. The ability of the Bureau to force recalcitrant financial institutions to respond to complaints would exist regardless of whether there is a public complaint database.

27. The Bureau did not disclose in the notice how much it has spent to date on its pilot scrubbing program, but the Bureau projects spending \$73 million in fiscal year 2015 on “Operations-consumer response.” Bureau of Consumer Financial Protection, *Strategic Plan, Budget, and Performance Plan and Report (March 2014)*, 14, <http://files.consumerfinance.gov/f/strategic-plan-budget-and-performance-plan-and-report-FY2013-15.pdf>.

28. Proposed Policy Statement, 42767.

29. 12 U.S.C. § 5511(a).

30. Bureau of Consumer Financial Protection, Consumer Financial Protection Bureau Strategic Plan FY2013–FY2017, Strategic Plan, <http://www.consumerfinance.gov/strategic-plan/>.

an enforcement action based on a set of anonymized anecdotes without first investigating whether they were accurate and representative. The proposed database expansion, however, encourages consumers to assess risks and compare products based on unverified, anonymous, and redacted anecdotes.³¹

THE BUREAU LACKS THE AUTHORITY TO PUBLISH CONSUMER COMPLAINT NARRATIVES

The Bureau's plan to expand the database to include consumer complaint narratives is outside its statutory authority. Despite the Bureau's contentions to the contrary, it is also inconsistent with open government directives. The other government databases that the Bureau cites as parallels to its own are not appropriate models for the Bureau to follow.

Congress Did Not Authorize a Public Consumer Complaint Database

The Bureau cites several statutory provisions in support of the proposed database expansion. These include the Bureau's ability to establish general policies with respect to executive and administrative functions,³² its obligation to report to Congress about the complaints it receives,³³ and its authority to make public—in aggregated or other appropriate formats—information it collects in monitoring the markets.³⁴ None of these provisions authorizes the Bureau to establish a publicly accessible complaint database. Another statutory provision directs the Bureau to collect consumer complaints and share data related to consumer complaints, but only with other state and federal regulators, subject to precautions to protect confidentiality and data security and integrity.³⁵ The provision does not direct the Bureau to share granular complaint data with the public. When Congress wants an agency to establish a public complaint website, it is able to require it explicitly.³⁶

In support of the database, the Bureau points generally to its statutory objectives of ensuring that “consumers are provided with timely and understandable information to make responsible decisions about financial transactions” and “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”³⁷ Publicizing complaint narratives as the Bureau intends would work counter to both of these objectives. As discussed earlier, the information could lead consumers to believe the Bureau has verified the facts and merits of posted complaints. The database is currently accessible through the Bureau's website, which displays on every page a prominent banner that includes an American flag and the following text: “An official website of the United States Government.”³⁸ The disclaimer—“We don't verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company.”—is in small font and difficult to locate on the consumer complaint database. The consumer complaint database, therefore, invites consumers to rely on incomplete and potentially inaccurate anecdotal information in their financial decision-making. By potentially harming the reputations of high-quality providers of consumer financial products and services, the consumer complaint database could adversely affect markets.³⁹

31. The Bureau already urges the public to draw conclusions from its existing database. See, for example, Julian Alcazar and William Shelton, “Data: We Participated in the National Day of Civic Hacking (again),” Consumer Financial Protection Bureau, June 26, 2014, <http://www.consumerfinance.gov/blog/category/data/>. According to this blog post, the Bureau “challenged the [event] participants to come up with ways to empower consumers by building tools and visualizations using” the Bureau's complaint database. *Ibid.*

32. 12 U.S.C. § 5492(a).

33. 12 U.S.C. §§ 5493(b)(3)(C) and 5496(c)(4).

34. 12 U.S.C. § 5512(c)(3)(B).

35. See 12 U.S.C. § 5493(b)(3)(D) and 12 U.S.C. § 5493 (b)(3)(A), which states that “The Director shall establish a unit whose functions shall include establishing ... a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.”

36. See, for example, 15 U.S.C. § 2055a, which directs the Consumer Products Safety Commission to establish a consumer product safety database.

37. 12 U.S.C. § 551(b)(1) and (5). These objectives are cited, for example, in Bureau of Consumer Financial Protection, Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. 37558, 37559 (June 22, 2012).

38. Bureau of Consumer Financial Protection, accessed September 5, 2014, www.consumerfinance.gov.

39. The Bureau likely would demonstrate greater interest in reputational harm if it had a safety and soundness mandate in addition to its consumer protection mandate.

The Proposal Is Not Consistent with Open Government Directives

The proposed policy statement claims that by expanding the database to include consumer complaint narratives, the Bureau would establish “itself as a leader in the realm of open government and open data.”⁴⁰ The Bureau refers specifically to the Office of Management and Budget’s (OMB’s) Open Government Directive.⁴¹ The expansion of the complaint database to include consumer narratives does not achieve the goals of open government. OMB’s directive emphasizes the importance of transparency, participation, and collaboration, but these principles are intended to open the operations of *government* to public view. They are not directed at the interactions between individuals and private companies, such as are at issue in the database.

The Bureau cites three examples of “a new vanguard of government engagement with the public and the marketplace through open data.”⁴² All of these are very different from the proposed expansion of the database. The Department of Health and Human Services (HHS) website HealthData.gov collects and makes available data—mostly research studies and datasets—from various government agencies.⁴³ Regulations.gov⁴⁴ publishes information pertaining to the federal rulemaking process and allows the public to submit comments on agency rulemakings.⁴⁵ GreenButtonData.org⁴⁶ “is an industry-led effort that responds to a White House call [to] provide electricity customers with easy access to their energy usage data in a consumer-friendly and computer-friendly format.”⁴⁷ None of these is comparable to a government-run public database compiling individual consumers’ complaints.

Because the Bureau invites the application of open government principles to the consumer complaint database, the Bureau needs to address the quality of the data. The OMB directive includes a warning that agency officials should “make certain that the information conforms to OMB guidance on information quality and that adequate systems and processes are in place within the agencies to promote such conformity.”⁴⁸ OMB’s guidance on quality (which applies to the Bureau) makes a point that is pertinent to the consumer complaint database: “the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines.”⁴⁹ The OMB goes on to direct agencies:

to develop information resources management procedures for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines.⁵⁰

Data objectivity turns on “whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased.”⁵¹ “Utility” is defined as “the usefulness of the information to the intended users.”⁵² The Bureau does not plan to assess narratives for

40. Proposed Policy Statement, 42766.

41. Peter Orszag, Director, Office of Management and Budget, *Open Government Directive*, Dec. 8, 2009 (hereinafter OMB Directive), http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf.

42. Proposed Policy Statement, 42767.

43. “Unleashing the Power of Data and Innovation to Improve Health,” US Department of Health & Human Services, accessed September 5, 2014, [Healthdata.gov/unleashing-power-data-and-innovation-improve-health](http://healthdata.gov/unleashing-power-data-and-innovation-improve-health).

44. Proposed Policy Statement, 42767.

45. “Frequently Asked Questions: What Is Regulations.gov?,” Regulations.gov, accessed September 5, 2014, <http://www.regulations.gov/#!faqs>.

46. Proposed Policy Statement, 42767.

47. Green Button, [Greenbuttondata.org](http://greenbuttondata.org), accessed August 8, 2014.

48. OMB Directive, 3.

49. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, at 8452 (Feb. 22, 2002).

50. *Ibid.*, 8453.

51. *Ibid.*, 8453.

52. *Ibid.*, 8453.

factual accuracy and reliability or place them in proper context, and consequently the database runs afoul of both the objectivity and utility standards.

The Bureau would likely counter that the database comprises opinions, which are not agency information subject to quality standards. The Bureau, however, justifies the expansion of the database to include consumer narratives in part by celebrating it as an open government initiative. The Bureau endorses the view that government should “treat information as a public asset, which when made available to its public owners, creates public value.”⁵³ Accordingly, the information in the expanded database should conform to information quality standards.

Other Government Databases Cited by the Bureau Are Not Comparable

The Bureau references a number of different agencies that have influenced the proposed database expansion, but each is distinguishable. In any case, bad practices at one agency do not justify bad practices at another. To the extent other agencies publish consumer comments without vetting them, they should be equally mindful of the potentially harmful effects on consumers, markets, and companies.

The Bureau cites the Federal Trade Commission, which releases consumer complaints in response to Freedom of Information Act (FOIA) requests.⁵⁴ Releasing information to someone who goes to the effort of filing a FOIA request is not comparable to publishing complaints indiscriminately on a website that invites public perusal and—implicitly—consumer reliance.

The Bureau also cites the Consumer Product Safety Commission’s (CPSC’s) consumer complaint database. SaferProducts.gov is a searchable database that includes consumer narrative complaints and company responses.⁵⁵ The CPSC recently launched the public database in response to a statutory mandate in the Consumer Product Safety Improvement Act of 2008.⁵⁶ The statute includes procedural safeguards on database quality. For example, the statute affords product manufacturers the opportunity to raise concerns about confidentiality and accuracy and submit comments for inclusion in the database.⁵⁷ The CPSC must “provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database.”⁵⁸ It also requires the CPSC either not to publish or to remove information it discovers to be materially inaccurate.⁵⁹

A company successfully challenged the CPSC in court to prevent it from posting a report the company argued was materially inaccurate.⁶⁰ The court dismissed the CPSC’s reliance on its disclaimer:

This disclaimer, however, is boilerplate and would not interest an ordinary consumer. Whatever calibrating or countervailing influence the disclaimer promises is insufficient to counterbalance the website’s inexorable import of serving as a sanctuary for reports relating to unsafe consumer products. Besides . . . the disclaimer does not appear to be visible on all computer monitors, at least without scrolling to the bottom of the page. . . . Furthermore, although Plaintiff could publicly comment on the report’s inaccuracy, ordinary consumers would likely dismiss this measure as disingenuous damage control.⁶¹

The court held that the commission’s decision to publish the materially inaccurate incident report in the database

53. Proposed Policy Statement, 42766–67.

54. Proposed Policy Statement, 42767.

55. CPSC About, “About SaferProducts.gov,” accessed September 5, 2014, www.saferproducts.gov/About.aspx.

56. Public Law 110-34, 122 Stat. 3048 (2008).

57. 15 U.S.C. § 2055a(c)(2).

58. 15 U.S.C. § 2055a(b)(5).

59. 15 U.S.C. § 2055a(c)(4).

60. *Company Doe v. Tenenbaum*, 900 F. Supp. 2d 572 (D. Md. 2012), *vacated in part, rev’d on other grounds, and remanded* 749 F.3d 246 (2014).

61. *Company Doe*, 900 F. Supp. 2d at 598.

was arbitrary and capricious and an abuse of discretion and enjoined the CPSC from publishing the report.⁶² The case serves as a useful reminder of the stakes involved when the government publishes materially inaccurate information.

CONCLUSION

The Bureau states that the purpose of the database is “to provide consumers with timely and understandable information about consumer financial products and services, and improve the functioning, transparency and efficiency of markets for such products and services.”⁶³ Although the information in the expanded database may be timely, it will not be uniformly correct, complete, representative, or understandable. Consumers, markets, and the Bureau itself all stand to lose from the expansion. If the Bureau nevertheless chooses to proceed, the Bureau could most effectively assess the nature and magnitude of these effects by undertaking a notice-and-comment rulemaking and fulfilling its attendant statutory obligations.⁶⁴

The Bureau initiated its database without due consideration of the problem the Bureau was trying to solve or the costs and benefits of the database. Rather than expanding the database’s potential to cause unintended harm, the Bureau should return to the drawing board. Once back at the drawing board, the Bureau should analyze whether there is a market failure, whether the Bureau is well suited to solve that market failure, whether Congress has given the Bureau the authority to create a public complaint database, and the potential costs and benefits of creating a responsible (i.e., not misleading) public complaint database.

Sincerely,

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62. *Ibid.*, 600.

63. Proposed Policy Statement, 42766.

64. See, for example, 12 U.S.C. § 5512(a)(2) and 5 U.S.C. § 609(a).